

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 21.11.2008  
Date of Order: 14<sup>th</sup> January, 2009

**CCP No. 155/2007**

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**14.01.2009**

**M/s Anant Raj Agencies Pvt. Ltd. & Anr. ... Petitioners**

Through: Mr. Harish Malhotra, Sr. Adv. with  
Mr. N.K. Kantawala and Mr. Priyank Sharma, Advocates

Versus

**Municipal Corporation of Delhi & Ors. ... Respondents**

Through: Mr. H.S. Phoolka, Sr. Adv. with  
Ms. Maninder Acharya, Mr. Kanwar Faisal and  
Ms. Vijaishree Dubey and Mr. Ajay Verma, Advocates

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**JUDGMENT**

The petitioner filed this contempt petition alleging deliberate violation of order dated 3.11.2006 of this Court in WP(C) 20153/2005 titled M/s AR Agencies Private Limited v. MCD wherein this Court gave following directions:

7. *It is, therefore, apparent as per the understanding of the DDA based on its available documents, the location of the khasra numbers tentatively falls within the regional part. However, it does not take a specific position on this issue and instead has agreed with the stand of the Ridge Management Board that the location would have to be finally determined after demarcation and settlement of rights in terms of the provisions of the Indian Forest Act. It is also clear that a general exercise has been directed and is under supervision of the Chief Secretary, Government of NCT. The same is expected to be finalized by 31<sup>st</sup> December, 2006.*

8. *While carrying out the exercise, all endeavour shall be made to ensure that the suit lands are surveyed at the earliest and the position is made clear. The authority shall ensure that the petitioner is informed about the correct position. In case, the khasra numbers of the suit lands do not fall within the Regional Park proposed, the MCD shall be informed within six weeks from today. The MCD is hereby directed to process the petitioners' application and give its final approval, in the light of the decision taken by the Government of NCT within the time indicated. The respondents, particularly, the Revenue Authority shall ensure that such demarcation of the suit lands in which petitioners are involved is done by issuing appropriate advance notice so that its representatives can be present at site.*

2. Notice of the petition was served upon the respondents. The stand taken by the respondents is that the respondents have not committed any contempt much less deliberate violation of the order of the Court.

3. The petition was initially filed against MCD, during pendency of the petition DDA and Forest Department were also made party. The stand of the DDA had been that the survey of land reveals that the land of the petitioner falls within Regional Park. The stand of MCD had been that DDA's affidavit showed

that the land in question has been marked as a part of Regional Park in the Master Plan, even though the same had not been included in reserved forest in notifications dated 2.4.1996 & 15.3.1991. Status of land was to be ascertained by the Forest Department and Revenue Department after demarcation and settlement of all rights and concessions pertaining to the Southern Ridge. Since a final exercise of demarcation and settlement of rights in terms of the provisions of Indian Forest Act had been directed to be undertaken under the supervision of Chief Secretary, Government of NCT, and all endeavours were to be made to ensure that the suit lands were surveyed at the earliest and the position was made clear to MCD, MCD could act only after the position was made clear to it. The exercise of demarcation as required to be undertaken was to take place in two stages; first stage included the demarcation by Revenue Department, after which the location of khasra numbers, in question, with respect to boundary of ridge was to be ascertained by the Forest Department. Commissioner MCD on affidavit stated that till date as per the records available, the said exercise, as envisaged in the order dated 3.11.2006 had not been completed. Only the first stage i.e. demarcation by the Revenue Department had been completed and the demarcation of the suit land by the Forest Department has not been completed. Therefore, MCD cannot be said to have deliberately not complied with the orders of this Court and in fact the order records that after completion of exercise by first department, the information was to be sent by Govt. of NCT to MCD and MCD was to sanction the plan only if the information to MCD was that the suit land did

not fall within the Regional Park proposed. It is further submitted that the application of the petitioner for grant of sanction for construction of motel building was referred to the Town Planning Department for examination and the Town Planning Department of MCD, sought clarification from DDA in respect of land use since the area happened to be border line of Ridge/Regional Park. This clarification was sought vide letter dated 30.11.2005. In response, DDA marked the tentative location of the site on the land use plan 2001 and part base map of the area according to which the suit land fell under the Regional Park. The location of the land under reference was also separately verified by official of DDA on the part base map of zone "J" which was compared with the plan of Ridge management and MPD-2001 as supplied by DDA. The verification of this plan vis-à-vis khasra numbers of the land of the petitioner showed that petitioner's land fell within Regional Park while the khasra numbers of other motel, whose plan was sanctioned fell outside the boundaries of Regional Park. The plan of the petitioner for motel could not be approved for the reason of land falling in Regional Park.

4. MCD/DDA has placed on record the site plans showing location of the petitioner's land. As per this site plan, the tentative location of the land of the petitioner fell within the boundaries of the Regional Park.

5. There is no doubt that there is an admission on the part of the DDA authorities that the land is owned by the petitioner. Affidavit of Mr. D.M.Shukla,

Conservator of Forest also shows that the land was not part of Reserved Forest. Therefore, no further demarcation was needed. However, on the ground that the land tentatively falls within the area shown as Regional Park in the Master Plan, the MCD had not sanctioned the plan of motel. Against the order of MCD rejecting the application for sanctioning plan of motel, the petitioner has already preferred an appeal before the MCD Tribunal, which is pending.

6. It is apparent that though there seems to be no deliberate violation of the order of this Court and some confusion was prevailing in MCD & DDA regarding the location of the land within the Regional Park and if plan could be sanctioned or not. Since, the petitioner has already preferred an appeal against the order of MCD, it would be in the fitness of things that the Appellate Tribunal decides about the legality of the order of MCD rejecting the plan after taking into consideration all facts and circumstances and pleas of the parties.

7. While exercising contempt jurisdiction, this Court has only to see if the order of the Court was complied with and there was no deliberate effort to defy the order. From the correspondence between MCD and DDA and from the minutes of meeting of the different officials, which had taken place for considering sanctioning of site plan of the petitioner, it is clear that the MCD had, after passing of the order of this Court, come into action and considered the issue of sanctioning of site plan. Demarcation was also done by Revenue Department in order to have the location of the area but the confusion still

prevails whether the private land of the petitioner falling in Regional Park can be permitted to be used for erecting a motel or not. These issues cannot be decided in contempt petition. I, therefore, find that there was no deliberate defiance of the order. The petition is hereby dismissed.

**January 14, 2009**

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**SHIV NARAYAN DHINGRA, J.**